

The Inspector Credentials Authorization Procedures

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The Inspector Credentials Authorization Procedures (ICAPs) facilitate a partnership between the United States Environmental Protection Agency (EPA) and federally-recognized Indian tribes, states, territories, and inter-tribal consortiums (tribes, states, and territories) to protect human health and the environment by monitoring the regulated communities' compliance with federal environmental laws.

The ICAPs set up the process EPA should use in order to “authorize” or “duly designate” inspectors employed by tribes, states, or territories to conduct environmental compliance inspections (inspections) with a federal credential on behalf of EPA. The ICAPs also establish limitations on the authorization of inspectors and contains detailed instructions for EPA on how to issue federal credentials to authorized inspectors. Finally, the ICAPs outline the roles and responsibilities of tribes, states, territories, and the inspectors who conduct inspections with federal credentials on behalf of EPA.

Tribes, states, and territories may also authorize or duly designate their own inspectors to conduct inspections based on either tribal, state, or territorial environmental laws or a delegation, authorization, or primacy of a federal environmental law. The ICAPs do not affect inspectors who conduct inspections with tribal, state or territorial credentials “in lieu of” EPA under delegation, authorization, or primacy of a federal environmental law.

The ICAPs is provided in draft to solicit detailed comments on the document from EPA and affected tribes, states, and territories. The ICAPs will become effective when finalized by EPA.

<p>NOTICE: The policies set out in this document are not final agency action but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this document or to act at variance with the guidance, based on an analysis of specific circumstances. EPA also reserves the right to change this guidance at any time without public notice.</p>
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1. **Applicability of the Inspector Credentials Authorization Procedures**
 - a. The Inspector Credential Authorization Procedures (ICAPs) apply whenever the United States Environmental Protection Agency (EPA) authorizes or duly designates (authorizes)¹ and issues federal credentials to tribal, state, and territorial inspectors (inspectors) who are nominated by a federally-recognized Indian tribe (tribe), state, territory, or inter-tribal consortium (tribe, state, or territory).² Authorization and issuance of a federal credential allows inspectors to conduct federal environmental compliance inspections (inspections) on behalf of EPA.
 - i. The ICAPs do not affect inspectors authorized by tribal, state, or territorial laws and inspections conducted “in lieu of” EPA under delegation, authorization, or primacy of a federal environmental law.
 - b. EPA is solely responsible for authorizing inspectors and issuing, replacing, renewing, and revoking federal credentials.
 - c. EPA retains decision-making authority for all federal enforcement and compliance assistance activities related to inspections conducted by authorized inspectors³ using federal credentials.
 - i. Neither tribes, states, territories, nor authorized inspectors may take a federal enforcement action with information gathered during an inspection conducted with a federal credential unless otherwise authorized to do so by EPA.
 - d. The ICAPs do not address every media-specific requirement related to authorization or the issuance and use of federal credentials.
 - i. EPA should continue to use applicable media-specific statutory or other requirements.
 - e. Authorized inspectors are required to act in accordance with all applicable federal environmental laws and requirements, including the ICAPs and the EPA Policy for

¹The terms “authorizing” or “duly designating” refer to the authority of the EPA Administrator to conduct inspections under each federal environmental law. The EPA Administrator subsequently delegated her authority to the EPA Regional Administrators and, in some cases, to other EPA offices. *See*, “Issuance of Inspector Credentials,” Memorandum from Steven A. Herman to Regional Administrators, et. al. (January 4, 1995).

²The ICAPs apply to inter-tribal consortia who maintain a cooperative agreement with EPA and are authorized to act on behalf of tribes.

³The terms “authorized inspectors” refers to inspectors employed by tribes, states, and territories who are authorized by EPA to conduct inspections on behalf of the Agency.

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- the Administration of Environmental Programs on Indian Reservations.⁴
- f. Authorized inspectors may use a federal credential only when performing official inspection-related duties on behalf of EPA.
2. **Points of Contact to Facilitate Implementation of the ICAPs**
- a. Each EPA Region should establish at least one point of contact (Regional POC) who is responsible for implementing and monitoring the ICAPs.
- i. When appropriate, each EPA Region may substitute the Regional POC with media-specific point(s) of contact.
- ii. Each EPA Region should provide affected tribes, states, and territories and their inspectors with the name(s) of the Regional POC(s).
- b. Each affected tribe, state, or territory should establish at least one point of contact (POC) who is responsible for implementing and monitoring the ICAPs.
- i. When appropriate, each affected tribe, state, and territory may substitute the POC with media-specific point(s) of contact.
- ii. Each affected tribe, state, and territory should provide EPA with the name(s) of their POC(s).
3. **Inspector Training Requirements**
- a. Health and Safety Training⁵
- i. Inspectors who will seek authorization after the ICAPs take effect and currently authorized inspectors⁶ must either:
- (1) Have finished the appropriate 24 hour or 40 hour health and safety training less than one year before his/her nomination to EPA; or
- (2) May have completed appropriate health and safety training earlier than one year prior to his/her nomination to EPA as long as the appropriate annual health and safety refresher courses have been completed.
- ii. Currently authorized inspectors who have not completed the appropriate health and safety training when the ICAPs take effect must:

⁴See, "EPA Policy for the Administration of Environmental Programs on Indian Reservations" (November 11, 1984).

⁵See, "Health and Safety Requirements for Employees Engaged in Field Activities," EPA Order 1400.2 (July 12, 1981); *See also*, "Respiratory Protection," EPA Order 1400.3 (July 24, 1981). Inspectors must also meet applicable Occupational, Safety, and Health Agency requirements.

⁶The term "currently authorized inspectors" means inspectors who obtained authorization from EPA before the ICAPs took effect.

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- (1) Complete appropriate health and safety training before conducting their next inspection under federal authority.
 - b. Initial Training Requirements
 - i. Inspectors who will seek authorization after the ICAPs take effect:
 - (1) Must have completed basic inspector training and media-specific training within the past 3 years; or
 - (2) May have completed basic inspector training and media-specific training earlier as long as the appropriate refresher courses have been completed.
 - ii. Currently authorized inspectors are not required to complete the initial training requirements found in section 3(b)(i) of the ICAPs.
 - c. Refresher Training Requirements
 - i. Media-specific refresher training is:
 - (1) Required every 3 years for all authorized inspectors regardless of when authorization occurred.
 - (a) Can include, but is not limited to, classroom training, on-the-job training, self-study, and (re)certification programs.
 - ii. Health and safety training is:
 - (1) Required to complete appropriate health and safety refreshers (8 hour course) every year for all authorized inspectors regardless of when authorization occurred.
- 4. **Training Courses**
 - a. Inspectors may complete the Initial and Refresher Training Requirements by taking courses offered by EPA and/or a tribe, state, territory, or non-governmental organization.
 - i. EPA may review the outline or other information on the non-EPA training course(s) to ensure that the course(s) meet(s) the requirements of the ICAPs.
 - (1) Tribes, states, and territories are encouraged to attach this information when submitting material on the inspector's training under section 5(a) of the ICAPs.
 - b. EPA should make EPA-sponsored courses that meet the Initial and Refresher Training Requirements available to inspectors at least twice per year.
 - c. EPA should compile and distribute to affected tribes, states, territories, and inspectors a quarterly update containing the dates and locations of EPA-sponsored courses that meet the Initial and Refresher Training Requirements, as well as other related training courses.
- 5. **Nomination of Inspectors and the Authorization Process**
 - a. Background and Nomination of Inspectors

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- i. The head of the tribe, state, or territory (or his/her designee) should review the qualifications of each inspector who could become an authorized inspector prior to nominating the person to EPA.
 - (1) Relevant qualifications include, but are not limited to, the inspector's background, education, training, and work-related experiences.
- ii. The head of the tribe, state, or territory (or his/her designee) should send (in writing) to the Regional POC all pertinent information on the nominee(s) relevant qualifications that was collected in section 5(a)(i) of the ICAPs.
 - (1) Information on the nominee(s) can be sent on the form found in Attachment 1 of the ICAPs.⁷
- b. EPA Action on Nominations
 - i. The EPA Regional Administrator (or his/her designee) should either authorize a nominee and issue a federal credential or refuse to authorize the nominee within sixty days after the appropriate Regional POC receives the nomination under section 5(a) of the ICAPs.
 - (1) EPA should send the tribe, state, or territory and the nominee a written explanation of the reason(s) for refusing to authorize the nominee at that time.
 - ii. EPA may extend the nomination review period beyond sixty days if an alternative time frame is discussed and agreed upon with the appropriate tribal, state, or territorial POC.
- c. Inspector Credentials Authorization Statement
 - i. EPA will issue an Inspector Credentials Authorization Statement (Authorization Statement)⁸ for:
 - (1) Newly authorized inspectors;
 - (2) Re-authorized inspectors;
 - (3) Currently authorized inspectors who have not previously signed an Authorization Statement;⁹ and
 - (4) Any authorized inspector requiring a replacement federal credential.

⁷See *Attachment 1*, Training Requirements Form (June 16, 1999). EPA will submit an Information Collection Request to White House Office of Management and Budget in order to obtain approval for collection of this information.

⁸See *Attachment 2*, Inspector Credentials Authorization Statement (June 16, 1999).

⁹Currently authorized inspectors do not need new federal credentials.

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- ii. After the ICAPs take effect, EPA will use Authorization Statements in place of existing credential acknowledgment statements.
 - iii. The following individuals are required to sign each Authorization Statement:
 - (1) The EPA Regional Administrator (or his/her designee);
 - (2) The head of the tribe, state, or territory (or his/her designee); and
 - (3) The inspector.
 - iv. The appropriate Regional POC should complete and send an Authorization Statement to the appropriate tribal, state, or territorial POC to obtain the signatures of the head of the tribe, state, or territory (or his/her designee); and the inspector.¹⁰
 - v. The tribal, state, or territorial POC should return the signed Authorization Statement to the appropriate Regional POC within sixty days of receiving the completed Authorization Statement.
 - vi. The EPA Regional Administrator (or his/her designee) should sign each Authorization Statement signed and returned under section 5(c)(v).
 - vii. EPA may issue, renew, or replace federal credentials only after an Authorization Statement is signed by each individual listed in section 5(c)(iii).
6. **Issuance, Tracking, Replacement, Renewal, Revocation, and Expiration of Federal Credentials**
- a. Issuance of Federal Credential Identification Cards or Letters
 - i. EPA should issue federal credentials to authorized inspectors on a media-specific basis after the EPA Regional Administrator (or his/her designee) signs the Authorization Statement under section 5(c)(vi)-(vii).
 - ii. EPA may issue multi-media federal credentials if authorized inspectors have qualified to conduct multi-media inspections under the ICAPs.
 - b. Federal Credential Tracking¹¹
 - i. EPA should track each authorization, including:
 - (1) Authorization Statement(s);
 - (2) Issuance and expiration dates of federal credentials;
 - (3) Reasons and dates of:

¹⁰EPA will complete information the name of the tribe, state, or territory, the inspector, the EPA Inspector Credential Identification Number, the credential expiration date, and the applicable federal environmental statute(s).

¹¹See, "Processing Inspection Credentials for Contractors and Grantees," Memorandum from Steven A. Herman to Regional Administrators, et. al. (December 31, 1996).

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- (a) Renewal or replacement of federal credentials;
 - (b) Cancellation of federal credentials (due to loss, theft, change in duties, retirement, etc.);
 - (c) Suspension or revocation of federal credentials (due to misuse or misrepresentation of qualifications or failure to comply with the ICAPs); and
 - (4) Level of security clearance issued to the authorized inspector (if appropriate).
- c. Federal Credential Renewal and Replacement
 - i. Tribes, states, and territories are responsible for providing the appropriate Regional POC(s) with all information relevant to renewal or replacement of each federal credential.¹²
 - (1) Federal credential renewal and/or replacement is dependent upon the authorized inspector's completion of the appropriate Refresher Training Requirements and continued adherence to the ICAPs.
 - ii. EPA should, when appropriate, renew and/or replace each authorization and federal credential upon request of a tribe, state, or territory.
 - (1) EPA should provide the tribe, state, or territory and the authorized inspector with written explanation of the reasons for refusing to renew an inspector's authorization or replace a federal credential at that time.
- d. Expiration of Federal Credentials
 - i. EPA should send each authorized inspector an expiration reminder notice at least ninety days before the expiration date of a federal credential.
 - (1) If a federal credential is about to expire and the applicable provisions of the ICAPs have been met, EPA will make every effort to re-issue the federal credential to the authorized inspector prior to the expiration date.
 - ii. Tribes, states, and territories are responsible for tracking the expiration of federal credentials and should send a renewal application to the appropriate Regional POC at least ninety days before a federal credential expires.
 - iii. EPA should include an expiration date on each federal credential issued to authorized inspectors.
 - (1) Each newly issued, renewed, or replaced federal credential will expire on March 31, 2002.
 - (2) Each federal credential currently held by an authorized inspector

¹²EPA, when appropriate, should replace lost or stolen federal credentials of authorized inspectors.

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that does not contain an expiration date will expire on March 31, 2002.

- (a) EPA should follow the procedures of section 6(a) of the ICAPs to notify tribes, states, territories, and authorized inspectors of the effective expiration date of each currently held federal credential.

7. **Misuse or Discipline for Misuse of Authorization or a Federal Credential and Revocation of a Federal Credential**

- a. The tribe, state, or territory should use appropriate disciplinary procedures if their authorized inspector(s) misuse(s) a federal credential or misrepresent(s) any qualifications in order to obtain a federal credential.
- b. EPA should immediately receive information on any:
 - i. Suspected misuse of authorization;
 - ii. Suspected misuse of a federal credential;
 - iii. Misrepresentation of any qualifications used to obtain authorization; and
 - iv. Disciplinary action taken against an authorized inspector for misuse of authorization or of a federal credential.
- c. EPA can immediately revoke an inspector's authorization and a federal credential for cause.
 - i. EPA should give the tribe, state, or territory and the authorized inspector a written explanation of the reason(s) for revocation of an inspector's authorization and federal credential(s) at the time of the revocation.

8. **Surrender of Federal Credentials**

- a. Authorized inspectors must surrender their federal credential(s) to their tribal, state, or territorial POC at the time any of the following actions occur:
 - i. Authorization is suspended, revoked, or canceled;
 - ii. The authorized inspector is reassigned, transferred, or is otherwise no longer employed as an inspector; or
 - iii. The federal credential is no longer required.
- b. The tribe, state, or territory POC is responsible for returning each surrendered federal credential to the appropriate Regional POC within fifteen days.

9. **Information on Responsibilities and Activities After Authorization of Inspectors**

- a. Attachment 3 of the ICAPs contain information related to EPA, tribal, state, territorial, and authorized inspector responsibilities and activities after authorization of inspectors and issuance of federal credentials. The responsibilities and activities are important to ensure effective monitoring and implementation of

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the ICAPs.¹³

- b. The following subjects are discussed in Attachment 3:
 - i. Inspections conducted outside of the jurisdiction of the tribe, state, or territory;
 - ii. Confidential business information and enforcement sensitive information;
 - iii. Federal forms;
 - iv. Facility inspection schemes;¹⁴
 - v. Federal warrants;
 - vi. Post-inspection activities.
- 10. **Resolution of Disputes between EPA and Tribal, State, or Territorial Governments**
 - a. To facilitate implementation of the ICAPs, EPA should use existing dispute resolution processes or follow the dispute resolution process contained in this section.¹⁵ Regardless of the process used, the dispute resolution procedures should emphasize informal negotiations between EPA and tribes, states, or territories.
 - i. At a minimum, the dispute resolution process should contain the following steps:
 - (1) Initial discussions between the points of contact from the EPA Region and the affected tribe(s), state(s), or territory(ies);¹⁶
 - (2) If necessary, subsequent discussions between the supervisor(s) of the points of contact from the EPA Region and the affected tribe(s), state(s), or territory(ies) to address unresolved issues;
 - (3) Unresolved issues should be elevated to the next line of management within EPA and the affected tribe(s), state(s), or territory(ies).

¹³See *Attachment 3, Responsibilities & Activities After Authorization of Inspectors* (June 16, 1999).

¹⁴For the purposes of the ICAPs, the term “facility” includes, but is not limited to, sites, areas, and farms.

¹⁵If existing dispute resolutions are used, EPA Regions should coordinate with the Office of Enforcement and Compliance Assurance (OECA). Coordination with the American Indian Environmental Office (AIEO) and the Regional Tribal Assistance Program is required if the dispute involves tribes or tribal inspectors.

¹⁶EPA coordination will include the Regional Tribal Assistance Program if the dispute involves tribes or tribal inspectors.

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- (a) Upon elevation of unresolved issues, the EPA Region should coordinate with the Assistant Administrator for OECA (or his/her designee).
 - (i) The EPA Region should coordinate with AIEO if the dispute involves tribes or tribal inspectors.
 - (4) If necessary, final dispute resolution should be conducted between the EPA Regional Administrator and the commensurate representative of the tribal, state, or territory.
 - (a) The EPA Regional Administrator, after consulting with the Assistant Administrator for OECA, retains final authority to resolve all disputes within their authority or delegation and associated with implementation of the ICAPs.
- b. Dispute resolution processes required by applicable federal statute or requirement take precedence over processes established pursuant to section 10(a)(1) of the ICAPs.